

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

JOE ANDREW SALAZAR,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 2:16-CV-01096-JRG-RSP
	§	
HTC CORPORATION,	§	JURY TRIAL DEMANDED
	§	
Defendant.	§	

**PLAINTIFF JOE ANDREW SALAZAR’S MOTION  
TO STRIKE DEFENDANT HTC CORPORATION’S  
SURREPLY CLAIM CONSTRUCTION BRIEF**

Plaintiff Joe Andrew Salazar (“Salazar”) files this Motion to Strike Defendant HTC Corporation’s Surreply to Plaintiff’s Reply to Defendant’s Responsive Claim Construction Brief (Doc. No. 97) (“Surreply Claim Construction Brief”) and shows:

1. Salazar moves to strike Defendant HTC Corporation’s (“HTC”) Surreply Claim Construction Brief filed on October 2, 2017 because the filing of surreply claim construction briefs are not authorized by the Court’s local patent rules or by the docket control orders entered in this action.

2. Patent Rule 4-5 governs the filing of the Claim Construction Briefs in the Eastern District of Texas. Patent Rule 4-5(a)-(c) provides that

(a) Not later than 45 days after serving and filing the Joint Claim Construction and Prehearing Statement, the party claiming patent infringement shall serve and file an opening brief and any evidence supporting its claim construction. All asserted patents shall be attached as exhibits to the opening claim construction brief in searchable PDF form.

(b) Not later than 14 days after service upon it of an opening brief, each opposing party shall serve and file its responsive brief and supporting evidence.

(c) Not later than 7 days after service upon it of a responsive brief, the party claiming patent infringement shall serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

3. The Fourth Amended Docket Control Order (Doc. No. 82) entered in this action on August 31, 2017 also does not authorize the filing of surreply claim construction briefs. The Court's Fourth Amended Docket Control Order (as well as every prior docket control order entered in this action) sets forth specific dates to (1) *Comply with P.R. 4-5(a) (Opening Claim Construction Brief)*; (2) *Comply with P. R. 4-5(b) (Responsive Claim Construction Brief)*; and (3) *Comply with P.R. 4-5(c) (Reply Claim Construction Brief)*. However, there is no deadline set for the filing of a *Surreply Claim Construction Brief* in the Court's Fourth Amended Docket Control and, as shown previously, the Court's local patent rules expressly do not provide for, nor authorize, the filing of surreply claim construction briefs.

4. Besides not being allowed by the Court's local patent rules or the docket control orders governing this action, permitting HTC to file a surreply claim construction brief is prejudicial to Salazar. Salazar is not authorized by any rules of this Court to file a responsive brief to HTC's Surreply Claim Construction Brief and it is unfair for HTC to fail to comply with the Court's local patent rules by unilaterally filing a claim construction brief that is not sanctioned by those rules or by any other orders of the Court in this action. As such, Salazar requests the Court to strike HTC's Surreply Claim Construction Brief.

WHEREFORE, Salazar respectfully requests the Court to strike Motion to Strike Defendant HTC Corporation's Surreply to Plaintiff's Reply to Defendant's Responsive Claim Construction Brief Defendant HTC Corporation's Surreply to Plaintiff's Reply to Defendant's Responsive Claim Construction Brief (Doc. No. 97) and for such other and further relief as the Court deems suitable and just.

Dated: October 3, 2017

Respectfully submitted,

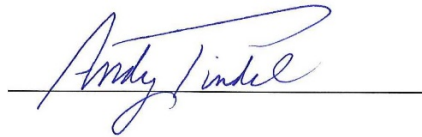
A handwritten signature in blue ink that reads "Andy Tindel w/ permission of Lead Attorney". The signature is written in a cursive, flowing style.

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*Attorneys for Plaintiff Joe Andrew Salazar*

**CERTIFICATE OF SERVICE**

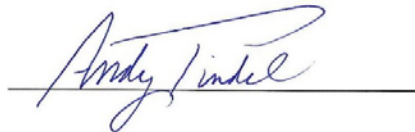
This is to certify that all known counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per E. Dist. Tex. Loc. Ct. R. CV-5(a)(3) on this the 3rd day of October, 2017. Any other known counsel of record will be served with a copy of this document by email and/or facsimile transmission.

A handwritten signature in blue ink, reading "Andy Tindel", is written over a horizontal line.

Andy Tindel

**CERTIFICATE OF CONFERENCE**

In compliance with E.D. Tex. Loc. Ct. R. CV-7(h), undersigned counsel for Plaintiff Joe Andrew Salazar communicated with Jerry Selinger, counsel for Defendant HTC Corporation, on October 3, 2017 with respect to Plaintiff's Motion to Strike Defendant HTC Corporation's Surreply to Plaintiff's Reply to Defendant's Responsive Claim Construction Brief. Counsel for Defendant HTC Corporation indicated he was opposed to the relief requested in this motion.

A handwritten signature in blue ink, reading "Andy Tindel", is written over a horizontal line.

Andy Tindel